

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

JONATHAN MANGAN, individually, and on
behalf of all other persons similarly situated,

Plaintiffs,

vs.

CHRISTIAN COUNTY, MISSOURI, by and
through its Board of County Commissioners, ROY
MATTHEWS, TOM CHUDOMELKA, and
BILL BARNETT, in their official capacities; and
STEVE WHITNEY, Sheriff of Christian County, in
his official capacity,

Defendants.

Case No. 99-3373-CV-S-AE-ECF

**PLAINTIFFS' MEMORANDUM IN SUPPORT
OF MOTION FOR ATTORNEYS' FEES AND EXPENSES**

I. INTRODUCTION

A. Nature of the Motion

COMES NOW Plaintiff Jonathan Mangan ("Plaintiff"), on behalf of himself and all class members ("Plaintiffs"), and, pursuant to Fed. R. Civ. P. 54(d)(2), submits the following Memorandum in Support of His Motion for Attorneys' Fees and Expenses. The provisions of 42 U.S.C. § 1988 provide that the Court may award a "reasonable attorney's fee" to the prevailing party in an action brought under 42 U.S.C. § 1983. See 42 U.S.C. § 1988. Plaintiffs' total attorneys' fees, after reducing Plaintiffs' counsel's hourly rate pursuant to 42 U.S.C. § 1997e, are \$9,919.00. See Declaration of Paul W. Rebein

in Support of Plaintiffs' Motion for Attorneys' Fees and Expenses. Plaintiffs also request \$720.00 for future monitoring of this case. Plaintiffs also request \$607.26 for expenses and costs. Plaintiffs respectfully request that the Court award them the full amount of these fees and expenses.

B. History of the Litigation

This class action commenced when Jonathan Mangan filed his class action complaint on October 6, 1999, alleging that the conditions of the Christian County Jail violated the constitutional rights of all jail inmates. Class counsel has vigorously represented the class and has helped secure the Court's recent ruling approving the Final Consent Decree. Therefore, Plaintiffs ask the Court for an award of reasonable attorneys' fees and expenses, which should include a reasonable amount for compliance monitoring over the two-year life of the Final Consent Decree.

II. AN ATTORNEY FEE AWARD IS APPROPRIATE

A. Legal Standards to Award Fees

42 U.S.C. § 1988 provides that "[i]n any action or proceeding to enforce a provision of section . . . 1983 . . . of this title, the court, in its discretion, may allow the prevailing party . . . a reasonable attorney's fee as part of the costs." A prevailing party "should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Hensley v. Eckerhart, 461 U.S. 424, 429 (1983) (quoting Newman v. Piggie Park Enters., Inc., 390 U.S. 400, 402 (1968)); A.J. by L.B. v. Kierst, 56 F.3d 849, 863 (8th Cir. 1995). Indeed, "'a strong showing of special circumstances is necessary to support a denial of attorney fees.'" Hatfield v. Hayes, 877 F.2d 717, 720 (8th Cir. 1989) (quoting J & J Anderson, Inc. v. Town of Erie, 767 F.2d 1469, 1474, abrogated on other grounds, Dennis v. Higgins, 498 U.S. 439 (1991)).

In order for Plaintiffs to recover, they must show that they are a prevailing party. See, e.g., St. Louis Fire Fighters Ass'n v. St. Louis, 96 F.3d 323, 330 (8th Cir. 1996). “[A] plaintiff prevails when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant’s behavior in a way that directly benefits the plaintiff.” Farrar v. Hobby, 506 U.S. 103, 111-112 (1992). Determining the amount of attorneys’ fees and expenses under § 1988 is left to the district court’s discretion. See id.

The Eighth Circuit recognizes “that when remedial action by a defendant moots the lawsuit before trial, a party is entitled to prevailing party status if his lawsuit was a catalyst that brought about or prompted the defendant’s remedial action.” A.J. by L.B., 56 F.3d at 865. Thus, courts have found that a party to be “prevailing” if a favorable settlement or consent decree is achieved. See Premachandra v. Mitts, 727 F.2d 717, 720 (8th Cir. 1984) (settlement); Hatfield, 877 F.2d at 719 (consent decree). Because Plaintiffs’ success has forced Defendants to cure the long-standing, deplorable conditions at the Christian County Jail, Plaintiffs are the “prevailing party” under § 1988 and are entitled to their attorneys’ fees. Accordingly, the Court’s Order Approving Final Consent Decree reflects that Plaintiffs were the prevailing party. (Final Order at 3) (“The Court further finds that Plaintiffs are a prevailing party and, therefore, are entitled to reasonable attorneys’ fees and costs pursuant to U.S.C. § 1988”).

The Eighth Circuit also recognizes that time spent on investigation and legal research prior to the filing of the Complaint may be compensated under section 1988. See McDonald v. Armontrout, 860 F.2d 1456, 1462 (8th Cir. 1988). Similarly, this jurisdiction has held “that, in the context of [fee requests under § 1988], postjudgment monitoring of a consent decree is a compensable activity for which counsel

is entitled to a reasonable fee. . . . We think it [is] within the District Court's discretion to compensate such work at a full rate." Id. at 1461.

Finally, because prevailing parties are entitled to attorneys' fees under section 1988 as a matter of course unless evidence of "special circumstances" exists barring such an award, and because Defendants can point to no special circumstances that would prevent the award of a fee in this case,¹ Plaintiffs are entitled to attorneys fees under section 1988.

Generally, section 1988 alone governs the awarding of attorneys' fees, but in a case filed by a prisoner, the Prison Reform Litigation Act ("PRLA") adds a second step to the analysis. See Clark v. Phillips, 965 F. Supp 331, 333 (N.D.N.Y. 1997). Section 1997e(d)(1) of the PRLA provides:

In any action brought by a prisoner who is confined to any jail, prison, or other correctional facility, in which attorney's fees are authorized under section 1988 of this title, such fees shall not be awarded, except to the extent that --

(A) the fee was directly and reasonably incurred in proving an actual violation of the plaintiff's rights protected by a statute pursuant to which a fee may be awarded under section 1988 of this title; and

(B)(i) the amount of the fee is proportionally related to the court ordered relief; or (ii) the fee was directly and reasonably incurred in enforcing the relief ordered for the violation.

42 U.S.C. 1997e(d)(1)(A)-(B) (1999).

1. An example of an appropriate special circumstance justifying a denial of attorneys' fees would be a "*de minimis* victor." See St. Louis Fire Fighters Ass'n, 96 F.3d at 331; see also Hatfield, 877 F.2d at 720 (stating that the special circumstances exception should be narrowly construed).

All attorneys' fees incurred in the course of this litigation directly relate to the results achieved. Furthermore, all fees for which reimbursement is sought were necessary, reasonable, and proportionally corresponded to substance of the Final Consent Decree entered by the Court. As such, the PRLA, in this instance, does not effect the outcome of the standard section 1988 analysis discussed above.

C. Determination of the Fee

“The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” Hensley v. Eckerhart, 461 U.S. 424, 434 (1983). “‘Reasonable fees’ under § 1988 are to be calculated according to the prevailing market rates in the relevant community, regardless of whether plaintiff is represented by private or non-profit counsel.” Blum v. Stenson, 465 U.S. 886, 895 (1984). In this instance, Plaintiffs “bear[] the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.” Hensley, 461 U.S. at 437. Once the Court has determined this presumptively reasonable “lodestar” fee, the court can adjust the product upward or downward. See Hensley, 461 U.S. at 434; Hendrickson v. Branstad, 934 F.2d 158, 160 (8th Cir. 1991).

42 U.S.C. § 1997e limits the recovery of attorneys' fees in suits by prisoners to 150% of the amount set under 18 U.S.C. § 3006A. Section 3006A limits attorneys' fees to \$60.00 per hour for in-court time and \$40.00 per hour for out-of-court time. Thus, Plaintiffs may not recover more than \$90.00 per hour for in-court time and \$60.00 per hour for out-of-court time.

D. Reasonableness of Work Performed and Rates Charged

Through February 17, 2000, class counsel has devoted 166.85 billable hours on behalf of Plaintiffs. Plaintiffs are seeking \$9,919.00 in fees for this work. Plaintiffs assert that the amount of time spent and the fees charged are reasonable.

1. Complexity of the Case

This case was brought in the form of a class action. Injunctive relief was required and detailed settlement notices had to be given. Further, the transient population of the Christian County Jail presented the additional obstacle of coordinating with class member witnesses. While Plaintiffs concede that Defendants were highly cooperative in all respects, class counsel was nonetheless required to conduct all required research and drafting of decrees, motions, and notices.

An additional illustration of the complex nature of this case is the perpetual monitoring of the Christian County Jail that will be required over the next two years. “[M]onitoring efforts were precisely the type of work that Congress anticipated would be remunerated under 42 U.S.C. § 1988.” McDonald, 860 F.2d at 1461. In an effort to mitigate the expense of such supervision, Plaintiffs have secured the volunteered service of the ACLU to conduct the unannounced inspections required under the terms of the Final Consent Decree to ensure continuous compliance with those terms. Class counsel, nevertheless, will need to spend an estimated 12.0 hours (0.5/month for twenty-four months) reviewing the legality of the reported compliance.²

2. As discussed below, Mr. Rebein has the expertise to conduct such a review. Thus, a total of \$720.00 (12 hours x \$60) is hereby requested for future monitoring.

2. Staffing and Hourly Rates

Class counsel staffed the case efficiently, avoiding duplication of efforts. The overwhelming majority of hours billed were for an associate-level attorney, who did most of the legal research and drafting of the class notice as well as the decrees, motions, and their supporting memoranda. Furthermore, class counsel utilized the volunteered services of the American Civil Liberties Union (“ACLU”) staff when possible to assist with much of the discovery work. The more experienced counsel, Mr. Rebein, performed the tasks which required his skill and expertise, such as revising key pleadings and briefs, arguing before the Court, and making strategic decisions.

3. Reasonable Hours

Part of the “lodestar” calculation is determining if the number of hours spent on tasks is reasonable. See, e.g., Premachandra, 727 F.2d at 733 (ordering downward adjustment of lodestar in case with excessive hours billed in an non-complex case). “A court may reduce attorney hours, and consequently fees, for inefficiency or duplication of services where more than one attorney is used.” A.J. by L.B., 56 F.3d at 864.

Class counsel has worked diligently to avoid duplication of all tasks. Class counsel submits that the hours spent on this case were reasonable in light of the result achieved.

4. “Lodestar” Fee

The Court can determine the “lodestar” fee by multiplying the reasonable hours class counsel spent on action by a reasonable hourly rate. See Hendrickson, 934 F.2d at 160.³ Plaintiffs request the following Lodestar amounts for each of the three attorneys on the case:

TIMEKEEPER	HOURLY RATE	TIME	FEES	TOTAL
Paul W. Rebein (in court) (out of court)	 \$90.00 \$60.00	 1.0 Hours 32.8 Hours	\$ 90.00 \$1,968.00 Total: \$2058.00	\$2,329.16
Eddie Lorenzo (out of court)	 \$60.00	 80.7 Hours	 \$4,842.00 Total: \$4,842.00	\$5,098.61
Holly Pauling (in court) (out of court)	 \$90.00 \$60.00	 1.0 Hours 43.75 Hours	\$90.00 \$2,625.00 Total: \$2,715.00	\$2,815.34
Kelli Curry	\$40.00	7.6 Hours	\$304.00	\$304.00
TOTALS		166.85 Hours	\$9,919.00	\$10,547.11

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3. “To determine what are ‘reasonably expended hours’ and what is a ‘reasonable rate,’ twelve factors should be considered. . . . These are: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the skill requisite to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the of the professional relationship with the client; and (12) awards in similar cases.” Southside Welfare Rights Org., 156 F.R.D. 187, 188 (W.D. Mo. 1993) (citations omitted).

5. “Lodestar” Adjustment

The Court may also in its discretion adjust the lodestar amount upward or downward. See Hensley. In adjusting the fee upward or downward, “the most critical factor is the degree of success obtained.” Hensley, 461 U.S. at 436, 103 S. Ct. at 1941.

Despite the degree of success Plaintiffs have achieved, no upward adjustment is sought. But, on the other hand, Plaintiffs similarly request that the Court not depart downward from the lodestar amount.

III. LITIGATION EXPENSES AND COSTS

In addition to legal fees, Plaintiffs are also entitled to recover reasonable litigation related expenses that are normally billed to clients. See Southside Welfare Rights Org., 156 F.R.D. at 190.

Plaintiffs do not seek reimbursement for any long-distance phone calls, fax expenses, copying costs or on-line research charges. Plaintiffs request that the Court award travel expenses. See McDonald, 860 F.2d at 1463. Plaintiffs seek to recover the mileage and hotel expense of one attorney attending the February 3, 2000, hearing on the Final Consent Decree. Plaintiffs also seek to recover for hotel expenses and filing fees. Plaintiffs’ total expenses are \$607.26. See Rebein Decl.

IV. CONCLUSION

Counsel therefore requests that the Court award them the attorneys’ fees requested. Plaintiffs’ total requested professional fee are \$9,919.00. Plaintiffs also request \$720.00 for future monitoring of the case. Plaintiffs also request costs and expenses in the amount of \$607.26.

WHEREFORE, Plaintiffs respectfully request that the Court award them these reasonable attorneys' fees and expenses.

SHOOK, HARDY & BACON L.L.P.

By _____

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of February, 2000, I mailed, postage prepaid, a true and correct copy of the above and foregoing to:

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